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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO LOPEZ CRUZ,

Defendant and Appellant.

F075646

(Super. Ct. No. F15901152)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Edward Sarkisian, Jr., Judge.

Laura P. Gordon, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Lewis A. Martinez, Rachelle A. Newcomb, and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Poochigian, Acting P.J., Peña, J. and Meehan, J.

INTRODUCTION

Defendant Roberto Lopez Cruz was convicted by a jury of sexual intercourse or sodomy with a child 10 years of age or younger (Pen. Code,¹ § 288.7, subd. (a)); oral copulation with or sexual penetration of a child 10 years of age or younger (§ 288.7, subd. (b)); two counts of aggravated sexual assault of a child (§ 269, subd. (a)(1)); forcible oral copulation (former § 288a, subd. (c)(2)(B)); and possession of child pornography (§ 311.11, subd. (a)). The trial court sentenced defendant to prison for the indeterminate term of 70 years to life, and for the determinate term of 12 years 8 months. Although defendant was provided an advisement under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*), he asserts he did not knowingly and intelligently waive his rights when he was interrogated by detectives. Upon review, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Defendant and S.R. had four daughters, including the victim, M.R. Defendant and S.R. separated. S.R. and the daughters lived together, and defendant moved into his own residence. On many weekends, M.R. and one of her sisters would go and stay at defendant's residence.

During these visits, defendant began sexually touching and penetrating M.R. When M.R. took baths, defendant would wash her body, including her vagina. Defendant would wake up M.R. during the night, orally copulate her, and have sexual intercourse. M.R. recalled she was about six years old the first time defendant committed the acts, and he performed such acts on at least seven separate occasions.

When M.R. was about 12 years old, defendant began picking her up in his car under the guise of wanting her help washing his car. After washing the car, he would drive somewhere, park the car, and then sexually touch and penetrate her. M.R. testified this occurred about five times. Defendant also took naked pictures of M.R. with his cell

¹Unless otherwise stated, all further statutory references are to the Penal Code.

phone. The photos were introduced into evidence, and M.R. identified and provided the shirt she was wearing in one of the photos.

M.R. told her friends at school her dad was inappropriately touching her, but M.R. asked them not to tell anyone. M.R. also began cutting herself. M.R.'s friends at school noticed she had cuts on her arms and was sad. One of her friends told a school official, who in turn informed law enforcement officials.

Police detectives interviewed defendant and the interview was played for the jury. During the interview, defendant initially denied having sex or taking naked pictures of M.R. Defendant eventually admitted to taking photos and having sexual relations with M.R., but sought to minimize his conduct. Defendant denied sexually touching M.R. when she was younger.

DISCUSSION

Waiver of *Miranda* Advisement

Defendant contends he did not knowingly and intelligently waive his rights under *Miranda* and his interview by law enforcement should have been suppressed. Defendant does not dispute he was read the *Miranda* advisement, but he contends the detectives made statements glossing over and downplaying the significance of the rights he was relinquishing. Even though the *Miranda* advisement was provided in Spanish, defendant contends he had trouble understanding the words used by the officer reading him the advisement.

A. Relevant Facts

Police detective Thao Xiong interrogated defendant in a room at the police department headquarters. Detective Veronica Salinas-Cardinale provided interpretative

assistance. After asking defendant several background questions, the officers provided defendant his *Miranda* advisement in the following exchange:²

“[DETECTIVE XIONG]: Um, we’re just gonna read you your—your rights real quick and then we can continue okay, with, uh, talking okay? I’m sure you have some questions and I will give you those, uh, answers okay? So this is our procedure that we read you your rights before we start talking to you, uh, additionally okay, further before we continue on with the, uh, um, conversation okay? So it’s—it’s just a practice. Go ahead.

“[DEFENDANT]: Uh, that I definitely barely understood.

“[DETECTIVE SALINAS-CARDINALE]: Okay. He says that I’m going to read you your rights ...

“[DEFENDANT]: Uh-huh.

“[DETECTIVE SALINAS-CARDINALE]: ... because we want to talk with you but you also have rights and we have to read your rights before we start with the questions.

“[DEFENDANT]: Okay. That’s fine, yes.

“[DETECTIVE SALINAS-CARDINALE]: You do understand? Okay. I’m going to read to you from my letter. ‘You have the right to remain silent. Anything you say could be used against you in a court of law. You have the right to speak to an attorney and to have—have present here with you. If you cannot a—pay for an attorney, one will be assigned to you before the interrogation if you so wish.’ Do you understand any—each of these rights I’ve read to you just now? Yes?

“[DEFENDANT]: Yes.

“[DETECTIVE SALINAS-CARDINALE]: Okay. And do you definitely want to talk with us?

“[DEFENDANT]: Yes, well yes. I don’t know why, yes, because I want to know what’s going on, right?

²The following is an excerpt from the interpreter’s transcript. Unless otherwise indicated, during the interview Xiong spoke to defendant in English while Salinas-Cardinale and defendant communicated with each other in Spanish.

“[DETECTIVE SALINAS-CARDINALE]: [*In English:*] Okay. I asked him if he understood his rights. He said yes. And then he said he just wants to—he wants to talk.

“[DETECTIVE XIONG]: Okay. He wants to talk?

“[DETECTIVE SALINAS-CARDINALE]: Mm-hm.

“[DETECTIVE XIONG]: Okay.

“[DETECTIVE SALINAS-CARDINALE]: That was (unintelligible).”

After being provided the *Miranda* advisement, defendant made incriminating statements.

Before trial, the prosecution moved to introduce the statements into evidence. The court watched and heard defendant’s interview, while following along with the corresponding transcript. Defendant objected to the admission of the interview, claiming he did not understand the constitutional rights he was waiving when he spoke with the detectives.

Defendant’s trial counsel explained:

“... I think it’s on page 8 of the transcript of 1-A where [defendant] ... says that [he] definitely barely understand [*sic*] and there was kind of going back and forth, and then they didn’t—hearing he had trouble understanding, they should have taken the time to go through each right individually.

“He clearly didn’t understand these are constitutional rights that he was waiving. They kind of even said, like, well, this is our practice. We just have to do this. They were kind of dismissive. I’m saying with the combination of not being told that he had rights to get in touch with his—the Mexican consulate and expressing he has trouble understanding some things. And then they just rushed through the admonitions and they didn’t give him, I don’t believe, an opportunity to truly understand that he was giving up significant constitutional rights. Based on that, I feel his statement should not ... be allowed in.”

The court granted the district attorney’s motion to introduce defendant’s statements made during the interview. The court held defendant “was properly advised

of his *Miranda* rights and gave a knowing, intelligent waiver.” Having reviewed the entire interview and the corresponding translated transcript, the court held despite defendant’s argument his writing and education were limited, “it [was] clear that defendant understood the questions presented to him.” The court noted defendant stated he understood his *Miranda* rights and there was an interpreter present throughout the entire interview.

B. Legal Standard

Under California law, issues relating to the suppression of statements made during a custodial interrogation must be reviewed under federal constitutional standards. (*People v. Nelson* (2012) 53 Cal.4th 367, 374; *People v. Lessie* (2010) 47 Cal.4th 1152, 1163–1164.) “Under the Fifth Amendment to the federal Constitution, as applied to the states through the Fourteenth Amendment, ‘[n]o person ... shall be compelled in any criminal case to be a witness against himself’” (*Lessie, supra*, at p. 1162; see U.S. Const., 5th Amend.) “““In order to combat [the] pressures [of custodial interrogation] and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights” to remain silent and to have the assistance of counsel.’” (*People v. Nelson, supra*, at p. 374.)

““Under the familiar requirements of *Miranda*, ... a suspect may not be subjected to custodial interrogation unless he or she knowingly and intelligently has waived the right to remain silent, to the presence of an attorney, and to appointed counsel in the event the suspect is indigent.’” (*People v. Smith* (2007) 40 Cal.4th 483, 501; see *People v. Sims* (1993) 5 Cal.4th 405, 440.)

““*Miranda* holds that “[t]he defendant may waive effectuation” of the rights conveyed in the warnings “provided the waiver is made voluntarily, knowingly and intelligently.” [Citation.] The inquiry has two distinct dimensions. [Citations.] First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of

the right being abandoned and the consequences of the decision to abandon it. Only if the “totality of the circumstances surrounding the interrogation” reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. [Citations.]” (*People v. Smith, supra*, 40 Cal.4th at pp. 501–502, quoting *Moran v. Burbine* (1986) 475 U.S. 412, 421.)

“Under both the federal and state Constitutions, the prosecution must prove the voluntariness of a confession by a preponderance of the evidence.” (*People v. Haley* (2004) 34 Cal.4th 283, 298, fn. 6; *Lego v. Twomey* (1972) 404 U.S. 477, 489.) “In reviewing *Miranda* issues on appeal, we accept the trial court’s resolution of disputed facts and inferences as well as its evaluations of credibility if substantially supported, but independently determine from undisputed facts and facts found by the trial court whether the challenged statement was legally obtained.” (*People v. Smith, supra*, 40 Cal.4th at p. 502.)

C. Analysis

The *Miranda* warnings provided by Detective Salinas-Cardinale apprised defendant of his rights, and we are not persuaded defendant lacked sufficient comprehension of the admonition or was improperly influenced by Detective Xiong’s comments to make his waiver involuntary. We have the benefit of viewing the audiovisual recording of the interrogation along with the interpreter’s written transcript of the portions of the interview spoken in Spanish.³ As defendant stated he understood but could not speak English, Detective Xiong spoke to defendant in English, and defendant responded in Spanish. Detective Salinas-Cardinale spoke to defendant in Spanish throughout the interview.

Detective Xiong stated, in English, they were going to read defendant his rights, and defendant responded he barely understood what Xiong said. Detective Salinas-Cardinale responded and repeated to defendant in Spanish they were going to read him

³While the interview was videotaped, the camera was focused on defendant, and the detectives cannot be seen during the vast majority of the interview.

his rights. Defendant responded affirmatively. Detective Salinas-Cardinale then recited in Spanish the *Miranda* advisement. When asked in Spanish if he understood each of the rights read to him, defendant responded affirmatively. He was next questioned whether he wanted to continue talking to the officers, and defendant responded he did because he wanted to know what was going on. Defendant did not ask any questions or make any comments after being read the *Miranda* advisement indicating he did not understand what he was advised.

Defendant supports his contention he did not comprehend what he was told in the *Miranda* advisement based on his comments made during a *Marsden* hearing prior to trial. (*People v. Marsden* (1970) 2 Cal.3d 118.) At the hearing, defendant stated even though the advisement was provided in Spanish, the “words the interpreter [was] using, they’re not the same words that are commonly used. These legal terms that are being thrown about.” In response, defendant’s attorney had “a naturally born” Spanish speaker review the interview, and other than a couple of uses of the wrong verb tense, the person found no significant issues with the translation.

While defendant noted he had difficulty understanding what Detective Xiong stated in English, he did not mention any difficulty understanding what Detective Salinas-Cardinale discussed in Spanish. Defendant was specifically asked by Detective Salinas-Cardinale if he understood the rights read to him, and he responded affirmatively. Defendant made no statement nor any physical manifestation indicating he was confused by the rights recited to him by Detective Salinas-Cardinale.

“[A] defendant’s statement is inadmissible unless all four [*Miranda*] warnings were given to the defendant prior to the interrogation, regardless of the defendant’s understanding of his or her rights.” (*People v. Bradford* (2008) 169 Cal.App.4th 843, 852.) There is, however, no rigid requirement the warnings be presented in any particular formulation or “talismanic incantation.” (*California v. Prysock* (1981) 453 U.S. 355, 359; see *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1238 (*Musselwhite*); *People v.*

Wash (1993) 6 Cal.4th 215, 236.) “The essential inquiry is simply whether the warnings reasonably “[c]onvey to [a suspect] his rights as required by *Miranda*.”” (*People v. Wash, supra*, at pp. 236–237.) Defendant has not raised any argument Detective Salinas-Cardinale’s reading of the *Miranda* advisements were incorrect. Nor, despite being asked, did defendant ask any questions regarding his rights. To the extent defendant contends he did not understand the meaning of the *Miranda* advisements, there is no objective evidence in the record to indicate any confusion on his part.

Defendant also contends the officers’ comments made during the interview downplayed the significance of the rights he was waiving. Prior to providing defendant the advisement, Detective Xiong explained they would read him his rights “real quick” and “it’s just a practice.” Defendant also argues Detective Salinas-Cardinale suggested he answer affirmatively by stating “Yes?” after asking if defendant understood the rights she had recited. Our review of the video of the interview makes clear Detective Salinas-Cardinale was asking if defendant understood the rights he was read. Her statement was not phrased as a command or in a manner suggesting defendant should answer affirmatively. We find the trial court did not err in finding defendant’s waiver to be knowingly and intelligently given despite the additional statements made by the officers.

In arguing his *Miranda* waiver was invalid, defendant relies on *Musselwhite, supra*, 17 Cal.4th 1216. In *Musselwhite*, the California Supreme Court found evidence of police efforts to trivialize a defendant’s *Miranda* rights that might, under certain circumstances, constitute a form of prohibited trickery. (*Musselwhite, supra*, at p. 1237.) There, the defendant contended the detectives engaged in trickery by asking him, “Well, we don’t know what you know and what you don’t know and so, what we’d like to do is just go ahead and advise you of your rights before we even get started and that way, that there’s no problem with any of it. Is that alright with you?” (*Id.* at p. 1234.) The detectives never used the word “technicality” or similar language to describe those warnings. (*Id.* at p. 1238.) The California Supreme Court held the detective’s comment

did not trivialize the importance of the *Miranda* warnings, and, to the contrary, “was an accurate statement of the office of the constitutionally derived *Miranda* warning” (*Id.* at p. 1237.)

Musselwhite does not support defendant’s argument. The detectives in this case, like those in *Musselwhite*, fully and accurately gave defendant *Miranda* warnings and advised him of his rights. We find Detective Xiong’s statements were truthful and accurate and did not take away from the importance of the rights described in the *Miranda* advisement. His statements were factually accurate. *Miranda* advisements are short and take little time to administer. They are also standard procedure when questioning a suspect in custody. Neither statement took away from the significance of the rights nor would indicate the rights described in *Miranda* were not important. The detectives said or did nothing that might be viewed as an attempt to trick defendant into waiving his rights under *Miranda* against his will.

Other courts have found similarly. In *People v. Johnson* (2010) 183 Cal.App.4th 253, 290, the detectives told one of the defendants, “[B]efore we get into [questioning] we have to ... clear the technicality. We have to [read] you constitutional rights.” Although the detectives explicitly referred to *Miranda* warnings as a technicality, the Court of Appeal held those warnings were not trivialized because the defendant fully understood her rights and knew the seriousness of the situation. (*People v. Johnson*, *supra*, at pp. 294–295.)

Unlike *Johnson*, the detectives never used the word “technicality” or similar language when referring to the *Miranda* warnings. Describing the procedure of providing *Miranda* warnings as a routine practice was a truthful statement and did not necessarily mean the advisement was less important because it was required to be given. Further, defendant knew the seriousness of the situation. He was brought into custody and was being interviewed by two police detectives for having sexual relations with his young daughter.

Our independent review of the evidence leads us to conclude defendant voluntarily, knowingly, and intelligently waived his rights under *Miranda*. The detectives did not trivialize those rights or engage in trickery to get him to waive them. The trial court did not err by admitting defendant's confession into evidence.⁴

DISPOSITION

The judgment is affirmed.

⁴Moreover, even if the confession was erroneously admitted, it would be harmless beyond a reasonable doubt. (See *Chapman v. California* (1967) 386 U.S. 18, 24.) Based on M.R.'s testimony and the photos found on defendant's cell phone, there was strong evidence to support the convictions without defendant's confession.